

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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In the Matter of

Review of Emergency Alert System

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) EB Docket No. 04-296  
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**REPLY COMMENTS OF ECHOSTAR SATELLITE L.L.C.**

EchoStar Satellite L.L.C. (“EchoStar”) hereby submits its reply comments in response to the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) in the above referenced proceeding.<sup>1</sup> EchoStar is a multichannel video programming distributor that provides video and other programming via Direct Broadcast Satellite (“DBS”) to subscribers throughout the United States.

The comments filed in this further rulemaking confirm the Commission’s wisdom in initially refraining from imposing state and local Emergency Alert System (“EAS”) requirements on DBS providers, in cognizance of the national architecture of satellite service.<sup>2</sup>

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<sup>1</sup> *Review of the Emergency Alert System*, First Report and Order and Further Notice of Proposed Rulemaking, EB Docket No. 04-296, FCC 05-191 (rel. Nov. 10, 2005) (“EAS FNPRM”).

<sup>2</sup> *Id.* at ¶ 56 (“We acknowledge the concern that DBS providers have expressed regarding technical and operational difficulties they expect to encounter if they are required to provide national, state and local EAS messages.”). In this further rulemaking, the Commission did request comment “[o]n assertions by Echostar, Sirius, and XM that DTH and SDARS providers should not be required to deliver state and local messages.” *Id.* at ¶68.

First and foremost, no party in this proceeding supports adoption of a requirement that DBS providers deliver state and local emergency alert messages, other than passing through the alerts provided by local broadcasters. On the contrary, many parties, including notably one broadcast commenter, advise against such a requirement. The state of this record compels the conclusion that, as EchoStar pointed out in its Comments, DBS delivery of local alerts, even if it were feasible, would cause duplication and consumer confusion, and would disserve the public interest.<sup>3</sup>

The Named State Broadcasters agree with EchoStar's assessment. In their words, "to attempt delivery of state and local emergency alerts [over satellite] could only serve to confuse and desensitize consumers."<sup>4</sup> EchoStar further agrees with commenters such as the National Association of Broadcasters ("NAB")<sup>5</sup> that local broadcasters are in the best position to deliver the state and local EAS messages. The NAB points out correctly that broadcasters remain the "[m]ost reliable and robust means of distribution."<sup>6</sup> Local broadcasters, who have a presence in local markets, should continue to be the source of state and local emergency alerts.

In markets where EchoStar retransmits local broadcast stations, EchoStar is already passing through the mandatory emergency alerts provided by broadcasters. Indeed, EchoStar cannot legally alter the signal of a broadcast station under the clear

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<sup>3</sup> Comments of EchoStar Satellite L.L.C., *filed in* EB Docket No. 04-296 (filed Jan. 24, 2006), at 3 ("EchoStar Comments").

<sup>4</sup> Joint Comments of the Named State Broadcasters, *filed in* EB Docket No. 04-296 (filed Jan. 24, 2006), at 11 ("Named State Broadcasters Comments").

<sup>5</sup> *See* Comments of the National Association of Broadcasters, *filed in* EB Docket No. 04-296 (filed Jan. 24, 2006).

<sup>6</sup> *Id.* at 5.

limits of the statutory copyright license of Section 122.<sup>7</sup> A requirement of overlaying DBS-originating alerts would thus be incompatible with the statutory license regime. Even more important, it would be contrary to the public interest to mandate a less reliable overlay produced far from the field by a national service provider on top of the more reliable alert system that has been developed by local broadcasters. Unlike other distributors, such as regional cable systems, DBS has a platform that covers the entire United States. Because EchoStar generally does not have a local presence in all of the markets it serves, no personnel are available to help monitor and supervise local emergencies and the accuracy of local alert systems. The inability to tailor alerts to local emergencies coupled with technical limitations that prevent targeting alerts to confined geographical locations within a Designated Market Area, ensures that any local EAS system developed by DBS providers will be inherently less reliable than alerts produced by local broadcasters.

Nor does it make sense to disrupt national programming for a local emergency. A satellite carrier distributes national programming to all of its customers nationwide, at the same time and using the same spectrum on the same national (or “CONUS”) satellite beam. As EchoStar has explained, it is not feasible today for EchoStar to overlay national programming with localized alerts destined for only a subset of the subscribers receiving that programming. As DIRECTV correctly asserts, DBS systems are not able

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<sup>7</sup> See 17 U.S.C. § 122(e) (“the secondary transmission to the public by a satellite carrier into the local market of a television broadcast station of a performance or display of a work embodied in a primary transmission made by that television broadcast station is actionable as an act of infringement . . . if the content of the particular program in which the performance or display is embodied . . . or station announcement transmitted by the primary transmitter . . . is in any way willfully altered by the satellite carrier through changes, deletions or additions . . .”).

to sort and disseminate state and local EAS messages only to subscribers in specific geographic regions.<sup>8</sup> EchoStar's system, like DIRECTV's,<sup>9</sup> is not designed to superimpose on a program individualized information and provide it to hundreds of set-top boxes simultaneously and instantaneously.<sup>10</sup>

In these circumstances, EchoStar agrees with the Named State Broadcasters<sup>11</sup> and DIRECTV<sup>12</sup> that significant customer confusion could occur due to false alarms for subscribers who are unaffected by the emergency, and that the attempted delivery would lead to customer apathy.<sup>13</sup> Local EAS messages sent on a national level to all subscribers would be inefficient and counterproductive and, thus, the Commission should not expand the mandate on DBS providers beyond national emergencies.

But the very characteristics of DBS systems that make them an unsuitable vehicle for localized alerts -- their national footprint and architecture -- make them an excellent and perhaps unmatched conduit for national alerts. DBS providers can serve an important function during national emergencies. During Hurricane Katrina, EchoStar provided many valuable services, including DISH service to shelters, which enabled dislocated citizens to view breaking news provided by local broadcasters. Quick and

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<sup>8</sup> Comments of DIRECTV, Inc., *filed in* EB Docket No. 04-296 (filed Jan. 24, 2006), at 2 ("DIRECTV Comments").

<sup>9</sup> DIRECTV Comments at 2.

<sup>10</sup> EchoStar Comments at 2.

<sup>11</sup> *See* Joint Comments of the Named State Broadcasters.

<sup>12</sup> DIRECTV Comments at 2.

<sup>13</sup> Joint Comments of the Named State Broadcasters at 11.

easy satellite dish installation made such service possible in situations where digging ditches and providing service over landlines was not practical.

In conclusion, many commenters agree and no one disagrees that it would be against the public interest for the Commission to mandate DBS participation in the EAS system at the state or local level.

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